



**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Stormwater Compensation Fee Utilization Plan Guidance
For Projects in Watersheds of Urban Impaired Streams
Pursuant to DEP Rule Chapter 500**

Introduction

This document provides guidance on the development of a Compensation Fee Utilization Plan to meet the compensation fee requirements for projects located in watersheds of *urban impaired streams*, identified in Appendix B of Department Rule Chapter 502. Those interested in guidance on compensation fees for projects located in lake watersheds should refer to a separate document, “Stormwater Compensation Fee Guidance for Projects in Lake Watersheds.”

The Stormwater Management Law (38 M.R.S.A. §420-D.11.) authorizes the Department to accept a compensation fee in lieu of meeting all or part of water quality standards in the watershed of a coastal wetland, river, stream or brook through adoption of rules. In Department Rule Chapter 500, Section 6, the Department establishes compensation fee requirements for projects located in the watersheds of urban impaired streams. The Rule restricts the use of compensation fees to watersheds where “a compensation fee utilization plan has been approved by the department.

How does the compensation fee work?

For a project in an urban impaired stream watershed listed in Chapter 502, Appendix B, a compensation fee or mitigation is required pursuant to Chapter 500, Section 6. In Section 6(A), a table lists the required compensation fees assessed, based on the area of roofs, other impervious surface, and landscaped area. By adding the per acre assessment for each developed area, a total fee is determined. This fee may be paid instead of other mitigation only if a Compensation Fee Utilization Plan has been approved by the Department.

Who is eligible to develop a Compensation Fee Utilization Plan (CFUP) ?

There are no restrictions on who may develop a plan. However, Chapter 500 Section 6.A.(1) requires that if a CFUP is proposed by an applicant who is not a municipality, the applicant must demonstrate that the plan has been submitted to the municipality in which the project is located for review prior to submittal of an application to the department.

What does a CFUP consist of?

A CFUP should contain the following elements:

- Name of the watershed in which work will be done;
- Letter signed by an authorized representative of the entity which will oversee the CFUP, in which it agrees to establish and maintain an account to collect and hold compensation fees;
- List of proposed compensation work to be done, including a listing of Best Management Practices (BMPs) to be installed or constructed with a cost estimate for each; and
- Plan for how BMPs will be maintained, including the party(ies) responsible for maintenance.

What kinds of activities are appropriate as compensation projects in a CFUP?

Compensation funds may be used to support a variety of activities. The list of compensation projects below is presented in order of general preference by the department, based on the following principles:

- The more permanent the fix, the more preferred the action.
- Actions that provide for treatment of runoff (e.g., diversion into a buffer) are preferred over those that solely address an erosion problem; projects that do both are fine.
- An existing source should be eliminated or reduced. Conservation (protection) of currently undeveloped land does not eliminate or reduce an existing source.

Compensation Projects (In order of preference, from highest to lowest)

- Elimination of an exporting land use and conversion to forest or meadow, preferably with long term protection. Example: Removal of parking area or buildings with restoration to natural vegetative cover.
- Establishment of vegetated riparian buffers along the banks of the impaired stream.
- Measures that provide low maintenance, passive treatment of existing and high export stormwater sources.

Examples:

- Diversion of ditched road runoff via frequent ditch turnouts into protected, natural buffer areas. This could be done in conjunction with ditch stabilization and road rehabilitation.
- Redistribution of channeled runoff from existing concentrated developed areas into natural buffer/filter areas. This should include a long-term maintenance plan for the distribution system.
- Installation of BMPs to correct existing sources of stormwater quality or quantity problems, complete with a long-term maintenance plan.

Examples:

- Retrofit of detention or temperature control BMPs in highly impervious sub-drainage.
- Retrofit of stormwater treatment BMPs such as bioretention cells in an existing high use parking area.
- Establishment of a watershed program for long term implementation and/or maintenance of mitigation measures. Example: Purchase of a regenerative air street sweeper for a town to regularly clean the street network in a high source urban runoff area.

Who may implement a CFUP?

Public, quasi-public or private, non-profit organizations may take on the responsibility of plan implementation. The entity responsible for plan implementation must be identified in the CFUP. A letter of agreement signed by an authorized representative of the organization taking on the responsibility is required. The entity will be responsible for maintaining a fund into which the compensation fee will be paid, arranging for work to carry out the plan, monitoring performance, and ensuring long-term maintenance of any Best Management Practices.

The department expects that a municipality, or a quasi-municipal organization, will be the most likely entity to implement a CFUP, and in some cases will have already developed, or will be working on developing, a watershed management plan for the impaired stream. Organizations that are interested in developing such plans should contact the department for assistance.

How is a plan approved?

The department will review the CFUP and if it finds it to be consistent with this guidance will issue written approval.

What if a municipality has already developed a watershed management plan for the stream?

The Stormwater Rules, Chapter 500, Section 6.(A) (3) allows the department to waive or reduce requirements for compensation fees or mitigation credit if a municipality, or quasi-municipal entity having jurisdiction over the area in which the project is located, has developed and is implementing, a watershed management plan for the stream watershed. The watershed plan must be approved by the department for the purpose of restoring water quality. As a practical matter, compensation fee money would likely go to the municipality and would only be waived or reduced upon the municipality's recommendation.